

REMARKS

Applicants respectfully request reconsideration of this application, and reconsideration of the Office Action dated February 23, 2004. Upon entry of this Amendment, claims 12, 14, 16, 19, 23-25 and 29-35 remain pending. The amendments to the claims are supported by the specification and original claims. No new matter is incorporated by this Amendment.

As an initial matter, Applicants again comment on the Examiner's assertion that SEQ ID NO:1 in the priority document is not the same as SEQ ID NO:1 of the present application. Applicants have again reviewed the alignment attached to the first Office Action (Paper No. 16) which shows two nucleotide discrepancies (i.e. nucleotides 92 and 587) between SEQ ID NO:1 as shown in the present application and what appears to be a U.S. PTO database copy of SEQ ID NO:1 from the foreign priority document. Applicants have also again reviewed SEQ ID NO:1 in the present application and the foreign priority document and found that both sequence match. That is nucleotide 92 is a "t" and nucleotide 587 is a "g" in both the priority document and the present application. Accordingly, the U.S. PTO database version of SEQ ID NO: 1, which lists both nucleotides 92 and 587 as a "c" is in error. Applicants thus submit that the claims of the present application are entitle to the priority date. Moreover, Applicants request that the Examiner acknowledge such entitlement or that a formal objection be made of record so that Applicants may more formally address this issue.

Applicants also note the Examiner's comments with respect to whether the sigD has been overexpressed. Applicants kindly direct the Examiner's attention to page 10, paragraph [0035] which states:

In the course of work carried out in connection with the present invention it was established that coryneform bacteria after overexpression of the sigD gene produce amino acids in an improved manner.

Accordingly, at least this paragraph shows that Applicants have indeed overexpressed the SigD gene and the overexpression of sigD results in an improved production of amino acids. Hence, Applicants respectfully request that the Examiner's statement be redacted from the record.

With respect to the start codon of SEQ ID NO:1, Applicants have already provided Birge (Bacterial and Bacteriophage Genetic, cited in an I.D.S. which was initial by the Examiner) which explains that "ttg" can be a start codon. Thus, Applicants will not further respond to this comment.

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The objection to the specification for purportedly being confusing was maintained. The Office Action again asserts the phrase "enzyme sigma factor D" is unclear. Moreover, the Office Action states that that evidence Applicants provide in the last Amendment which shows how those of ordinary skill in the art would interpret the phrase "enzyme sigma factor D" was not received by the Examiner. However, Applicants kindly direct the Examiner's attention to the P10726 document that was cited in an I.D.S. and initialed by the Examiner. As previously stated, this document shows that those of ordinary skill would understand the sigD gene to be an RNA polymerase (i.e. an enzyme) involved in transcription regulation. Hence, the specification as written would not be confusing to those of ordinary skill in the art. However, Applicants would be willing to amend the specification to recite that the sigD encodes an RNA polymerase sigma-D factor if the Examiner believes that doing so would clarify the specification. Otherwise, Applicants submit that this objection has been overcome and its withdrawal is respectfully requested.

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The rejection of claim 23 under 35 U.S.C. § 112, first paragraph, as purportedly not being fully enabled by the specification was also maintained. The Office Action asserts that the specification does not provide support for "unknown" variations of feedback-

resistance aspartase kinase and threonine dehydratase. In response, claim 23 has been amended by deleting reference to “feedback-resistance” (with respect to aspartase kinase) and “threonine dehydratase.” Hence, this rejection has been accommodated and its withdrawal is respectfully requested.

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Claim 29 is objected to for failing to further limit the claim from which it depends. In response, claim 29 has been rewritten in independent form. Hence, the objection is overcome and its withdrawal is respectfully requested.

* * *

Claims 23 and 24 are rejected under 35 U.S.C. § 112, second paragraph, as purportedly indefinite.

In response to this rejection, Applicants have removed the gene names as suggested by the Examiner. Moreover, the phrases “a protein for lysine export” and “zwa2 protein” have been deleted from the claims. However, with respect to the “zwa1 protein”, Applicants note that the terminology zwa1 protein would be readily understood by those of ordinary skill in the art. For example, U.S. Pat. No. 6,632,644 describes the “zwa1 protein” of coryneform bacteria. Hence, those of ordinary skill in the art would readily understand what is intended by the terminology “zwa1 protein.”

In view of the above remarks, Applicants respectfully submit that the rejection is overcome. Hence, reconsideration and withdrawal of the rejection are respectfully requested.

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Claim 23 is rejected under 35 U.S.C. § 112, first paragraph, as purportedly containing subject matter that is not adequately described. In response and as stated above, claim 23 has been amended by deleting reference to “feedback-resistance” (with respect to

aspartase kinase) and “threonine dehydratase.” Hence, this rejection has been accommodated and its withdrawal is respectfully requested.

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Claims 23 and 24 are rejected under 35 U.S.C. § 112, first paragraph, as purportedly containing subject matter that is not adequately described.

As stated above, the phrases “a protein for lysine export” and “zwa2 protein” have been deleted from the claims. With respect to the “zwa1 protein”, the specification refers to DE: 19959328.0 where the zwa1 protein is described. Since this document has been incorporated by reference into the present specification, the present specification adequately describes the “zwa1 protein.” Hence, this rejection is overcome and its withdrawal is respectfully requested.

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Claims 12, 14, 16, 19, 23-25, and 29-35 are rejected under 35 U.S.C. § 112, first paragraph, as purportedly containing subject matter that is not fully enabled by the specification. The Office Action asserts that the specification does not enable the full scope of the claimed method. Applicants respectfully traverse.

In response, claims 12 has been amended to recite that the “overexpression is achieved by increasing the copy number of said polynucleotide.” In addition, claims 29 and 30 have both been amended to recite that the “overexpression is achieved by transforming said bacteria with a vector comprising said polynucleotide.” The claims as amended are fully enabled by the specification. Hence, this rejection is overcome and withdrawal of the rejection is respectfully requested.

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Claims 23 and 24 are rejected under 35 U.S.C. § 112, first paragraph, as purportedly not being enabled by the specification.

The terminology "lysC" and "zwa2 protein" have been deleted from the claims. With respect to the "zwa1 protein", Applicants respectfully submit that given the teachings of the specification and the comments above with respect to the zwa1 protein, those of ordinary skill in the art would be able to obtain the zwa1 protein without undue experimentation. Hence, this rejection is overcome and its withdrawal is respectfully requested.

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Applicants respectfully submit that this Amendment and the above remarks obviate the outstanding objection and rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees under 37 C.F.R. §§ 1.16 or 1.17 are due in connection with this filing, please charge the fees to Deposit Account No. 02-4300; Order No. 032301.190.

If an extension of time under 37 C.F.R. § 1.136 is necessary that is not accounted for in the papers filed herewith, such an extension is requested. The extension fee should be charged to Deposit Account No. 02-4300; Order No. 032301.190.

Respectfully submitted,
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